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Utah Court of Appeals

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Don R. Petersen; Howard, Lewis & Petersen; Attorney for Plaintiff-Appellee.

Matthew Hilton; Attorney for Defendant-Appellant; Paul D. Lyman; Attorney for Intervenors.

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Brief of Appellant, *Broderick v. Broderick*, No. 960775 (Utah Court of Appeals, 1996).

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

DOCKET NO. 960775-CA

ELAINE D. BRODERICK,	:	
Plaintiff and	:	
Appellee,	:	
vs.	:	
BOYD E. BRODERICK,	:	
Defendant and	:	Case No. 960775-CA
Appellee.	:	
vs.	:	
ALMA L. BRODERICK and	:	
SEPHRONIA L. BRODERICK,	:	
Intervenors and	:	
Appellants.	:	

Priority 15

BRIEF OF APPELLANT
(INTERVENORS)

APPEAL FROM AN ORDER OF THE FOURTH JUDICIAL DISTRICT
COURT OF MILLARD COUNTY, THE HONORABLE GUY R. BURNINGHAM
IMPROPERLY AWARDING THE DEFENDANT CERTAIN LAND AND WATER SHARES,
AND IMPROPERLY AWARDING THE PLAINTIFF A \$4,500.00 JUDGMENT ON AN
ALLEGED CONTRACTUAL RENT CLAIM.

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FILED
Utah Court of Appeals
JUL 07 1997
Julia D'Alesandro
Clerk of the Court

IN THE UTAH COURT OF APPEALS

ELAINE D. BRODERICK, :
 :
 Plaintiff and :
 Appellee, :
 vs. :
 :
 BOYD E. BRODERICK, :
 :
 Defendant and : Case No. 960775-CA
 Appellee. :
 :
 vs. :
 :
 ALMA L. BRODERICK and :
 SEPHRONIA L. BRODERICK, :
 :
 Intervenor and :
 Appellants. :

BRIEF OF APPELLANT
(INTERVENORS)

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JURISDICTION

The Utah Court of Appeals has jurisdiction to entertain appeals from district courts involving domestic relations cases, including matters such as these raised below. Section 78-2a-3(2)(h), Utah Code Annotated, as amended.

STATEMENT OF ISSUES

and

STANDARD OF APPELLATE REVIEW

The first issue is did the court err in awarding all of the farm and all of the 30 shares of Deseret water stock to the Defendant, when the Intervenor were tenants in common with the Plaintiff and the Defendant in the ownership of this real property and water stock? The standard of review is abuse of discretion. Bingham v. Bingham, 872 P.2d 1065 (Utah App. 1994.)

The second issue is did the court err in awarding the Plaintiff a \$4,500.00 judgment against the Intervenor when the Plaintiff was not a party to the alleged agreement, when the Plaintiff stated that the purpose of the alleged agreement was to help the Plaintiff and the Defendant qualify for a loan and when no attempt was ever made to collect any rent? The standard of review in determining if a contract exists is a review for correctness. Bench v. Bechtel Civil & Minerals, Inc., 758 P.2d 460 (Utah App. 1988.)

DETERMINATIVE CONSTITUTIONAL PROVISIONS,
STATUTES, ORDINANCES, RULES AND REGULATIONS

Section 30-3-5(1), Utah Code Annotated, as amended,
states in pertinent part as follows:

When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties.

STATEMENT OF THE CASE

This case involves a divorce action wherein the Defendant's parents intervened to protect certain property right claims they had. A trial was held on October 13, 1995. The trial court issued a Memorandum Decision on January 16, 1996. The original Findings of Fact, Conclusions of Law and Decree of Divorce were signed, but objected to, and an Amended set of Findings of Fact, Conclusions of Law and Decree of Divorce were entered on August 13, 1996. The Amended set of Findings of Fact and Conclusions of Law and Decree of Divorce were objected to after Notices of Appeal were filed on November 25, 1996, by the Intervenor, and on November 27, 1996, by the Defendant. On June 17, 1996, the District Court denied all objections and directed the Appeal to proceed.

The trial court was asked to divide certain property among the Plaintiff, Defendant and Intervenor. The trial court awarded the 70 acre farm and 30 shares of Deseret water stock to the Defendant, even though the Plaintiff and the Defendant were

joint tenants holding a one-half interest in the acreage and the water stock as tenants in common by deed with the Intervenor, who were themselves joint tenants holding the other one-half interest. The trial court also awarded a \$4,500.00 judgment to the Plaintiff and against the Intervenor, even though the Plaintiff was not a party to the alleged agreement, the Plaintiff stated that the purpose of the agreement was to help the Plaintiff and the Defendant to qualify for a loan and no attempt was ever made to collect any rent. The Intervenor appeal both of these rulings.

Notice of Appeal was filed on November 25, 1996.

STATEMENT OF FACTS

1. The parties were married on October 24, 1987.

Transcript page 17.

2. The Plaintiff, the Defendant and the two Intervenor purchased a 70 acre farm, 62 acres of Melville Irrigation water stock and 32 shares of Deseret water stock in May of 1990.

Transcript pages 40, 47 and 48.

3. The County Plat map shows the Plaintiff and the Defendant as joint tenants owning a one-half interest in the 70 acre farm and the Intervenor as joint tenants owning the other one-half interest in the 70 acre farm. Attachment to Trial Exhibit 15. (See Addendum.)

4. Trial Exhibit 16 shows the parties all as Joint

Tenants of the Melville Irrigation water stock. Trial Exhibit 16.
(See Addendum.)

5. In 1990, when the parties decided to purchase the farm and water shares, the lending agency required a Rental Agreement for a house that the Defendant had purchased from his parents, in which the parents then resided. Transcript pages 27, 33 and 152.

6. This Rental Agreement was created in March, 1990, but backdated to February 25, 1989, and admitted at trial as Exhibit 9. Transcript pages 27 and 152. (See Addendum.)

7. The Rental Agreement was between Boyd Broderick, the Defendant, and his father, Al Broderick, one of the Intervenor. Exhibit 9. (See Addendum.)

8. The Plaintiff acknowledged that no rental payments were ever made on the house Boyd purchased from his parents. Transcript pages 34 and 35.

9. The Plaintiff acknowledged that in January, 1993, when the house was sold back to Boyd's parents by Boyd, no money was ever paid or requested for rent on the house. Transcript pages 35, 36 and 48.

10. The \$300.00 per month that the Defendant had been paying to purchase the house was all taken and applied to the purchase of the farm and water stock, i.e., the Intervenor received none of these payments because they went to purchase the farm and water stock. Transcript page 152.

SUMMARY OF ARGUMENTS

The trial court received undisputed evidence showing that the Plaintiff and the Defendant were joint tenants in the ownership of a one-half interest in the 70 acre farm and 30 shares of Deseret water stock and that the Intervenorors were joint tenants in the ownership of the other half interest in the farm and the water stock. The trial court awarded all of this property solely to the Defendant, which was an error and should be corrected. The trial court should have awarded the Plaintiff's and the Defendant's one-half interest as it felt appropriate and the Intervenorors' other one-half interest to the Intervenorors, just as the court did with the Melville Irrigation water stock.

The trial court awarded a \$4,500.00 judgment in favor of the Plaintiff and against the Intervenorors. The Plaintiff was not a party to the alleged rental agreement. The Plaintiff acknowledged that the purpose of this alleged agreement, which was created a year after the rental period began, was to help the Plaintiff and the Defendant to qualify for a loan. The Plaintiff acknowledged that no attempt was ever made to collect any rent. There was no agreement to which the Plaintiff was a party. If there was a rental agreement, it was abandoned by the parties. The judgment for the Plaintiff and against the Intervenorors was in error.

ARGUMENT

POINT I

DID THE COURT ERR IN AWARDING ALL OF THE 70 ACRE FARM AND ALL OF THE 30 SHARES OF DESERET WATER STOCK TO THE DEFENDANT, WHEN THE INTERVENORS WERE TENANTS IN COMMON WITH THE PLAINTIFF AND THE DEFENDANT IN THEIR OWNERSHIP?

In order to operate the parties' farm the parties jointly purchased a 70 acre farm near Delta, Utah; 62 shares of Melville Irrigation water stock; and 30 shares of Deseret water stock.

The court received undisputed, documentary evidence that originally came from the Millard County Recorder's office that demonstrated that the 70 acre farm was purchased with the Plaintiff and the Defendant owning a one-half interest as joint tenants and the Intervenor owners owning the other one-half interest as joint tenants. (See the plat map attached to Exhibit 15, which is included in the Addendum.) The court also received the Melville Irrigation water stock certificate that showed that the parties owned the water stock as joint tenants. (See Exhibit 16, which is included in the Addendum.)

In the court's Amended Findings of Fact and Conclusions of Law, the Court found in paragraph 11 that only the Plaintiff and the Defendant were owners of record of the 70 acre farm. That finding did not conform to the evidence. In paragraph 12, the Court found that the Intervenor owners were joint owners of the Melville Irrigation water stock. The Court later found in paragraphs 22 and 24 that the Plaintiff and the Defendant each owned a one-fourth interest in the Melville Irrigation water stock, a one-half

interest in the Deseret water stock and a one-half interest in the farm. This was an error to not find that the Intervenor owners owned one-half of each of these assets.

This error was perpetuated in paragraphs 6 and 8 of the Amended Decree of Divorce, wherein the Defendant was awarded the 70 acre farm and the 30 shares of Deseret water stock in their entirety. The Defendant and the Intervenor owners were each awarded a one-half interest in the 62 shares of Melville Irrigation water stock.

When a joint tenancy is terminated by a judicial sale, the owners become tenants in common. Jolley v. Corry, 671 P.2d 139 (Utah 1983). Each owner receiving the owner's actual share. Under Utah law it is presumed that shares of co-tenants are equal. Matter of Estate of Gorrell, 765 P.2d 878 (Utah 1988). Thus, each of the owners should have received their actual share. In this matter the married couple, i.e., the Plaintiff and the Defendant, were one-half owners of these assets and should have received a one-half interest in each of these assets. The Intervenor owners should have received the other one-half interest. The court misunderstood the nature of the ownership of the 70 acre farm and the Deseret water stock. They were owned as shown in Exhibit 15, the County plat map. This misunderstanding is demonstrated by the conflict between the finding in paragraph 11 of the Findings of Fact and the County Plat map. Consequently, the court should have awarded each of the parties a one-fourth interest in the 70 acre

farm, 62 shares of Melville Irrigation water stock, and 30 shares of Deseret water stock. To do otherwise is an abuse of the court's discretionary powers.

The court should correct this error and order that the 70 acre farm and the 30 shares of Deseret water stock are each owned one-half by the Defendant and the other half by the Intervenor.

POINT II

DID THE COURT ERR IN AWARDING THE PLAINTIFF A \$4,500.00 JUDGMENT AGAINST THE INTERVENORS WHEN THE PLAINTIFF WAS NOT A PARTY TO THE ALLEGED AGREEMENT, WHEN THE PLAINTIFF STATED THE PURPOSE OF THE ALLEGED AGREEMENT WAS TO HELP THE PLAINTIFF AND THE DEFENDANT QUALIFY FOR A LOAN, AND WHEN NO ATTEMPT WAS EVER MADE TO COLLECT ANY RENT?

In paragraph 9 of the Amended Findings of Fact and Conclusions of Law, the trial court found as follows:

Alma L. Broderick, one of the intervenors, entered into a written contract with the plaintiff and defendant to rent the plaintiff and defendant's home located in Delta, Utah, for the sum of \$250.00 per month. There is owed the sum of \$9,000.00, which is calculated from February, 1989, to January, 1993. It is reasonable and proper that the plaintiff be granted judgment against the intervenors Alma L. Broderick and Sephronia L. Broderick in the amount of \$4,500.00 for delinquent rent.

The trial court did not enter any conclusion of law related to this finding of fact, i.e., the court never found a contract existed.

However, the trial court in paragraph 12 did order as follows in the Amended Decree of Divorce:

Plaintiff is awarded judgment against the intervenors Alma L. Broderick and Sephronia L. Broderick in the amount of \$4,500.00 for delinquent rent.

A copy of the February 25, 1989, rental agreement, Exhibit 9, is attached as a part of the Addendum to this brief. It is between "Boyd Broderick", the Defendant, and "Al Broderick", one of the Intervenor. The Plaintiff is simply not a party to the written contract. Everyone has a right to select and determine with whom that person will contract, and cannot have another person thrust upon him without his consent. 17 Am. Jur. 2d, Contracts, Section 22. Al Broderick chose to enter into a contract with his son, Boyd. For whatever reason he did not enter into this contract with his daughter-in-law and he did not involve his wife. There was no contract between Elaine and either of her in-laws, the Intervenor. The trial court should have so found and ruled.

During Elaine Broderick's direct testimony, this rental agreement was introduced without objection as Exhibit 9.

(Transcript page 27.) The rental agreement was on a house in Delta that Boyd had purchased from his parents. (Transcript page 33.) Elaine acknowledged that her in-laws never made any rental payments even though they lived in the house. (Transcript pages 34 and 35.) In January of 1993, Boyd then sold the house back to his parents. (Transcript pages 35 and 36.)

During cross-examination of Elaine, she acknowledged two crucial points. First, that no money was ever paid on the rental

agreement. Second, that no money was requested as a result of the rental agreement when the home was sold back to the parents.

(Transcript page 48.)

Late in the trial on redirect examination the purpose of the rental agreement was provided by Elaine. In 1990, the year after the house had been bought by Boyd, the parties were in the process of trying to get a loan to buy the farm. The \$300.00 per month that Boyd was paying to his parents for the purchase of the Delta house was being set aside by his parents for the use of Boyd at a future date. The parties then determined that that money would be used as Boyd's down payment on the farm. All of this was in lieu of rental payments. However, the bank insisted on a rental agreement in order to show enough income for Boyd and Elaine to qualify for a loan. Consequently, in March, 1990, a rental agreement was drafted to satisfy the bank and in order for Boyd and Elaine to qualify for the loan. (Transcript page 152.)

The sole purpose of the rental agreement was, according to Elaine, to qualify for the loan to purchase the farm. No money was ever sought or expected from the rental agreement.

Applying these facts to Utah law leads to the conclusion that the trial court erred, i.e., no contract was ever created to require rental payments.

However, assuming that Elaine was a party to the rental agreement, which she was not, the question arises, was this contract legally abandoned.

The term "abandonment" when applied to a contract was defined by the Utah Supreme Court as follows:

The term "abandonment" in the sense involved here means the intentional relinquishment of one's rights in the contract; and in order to nullify such rights, there must be a clear and unequivocal showing of such abandonment. Where there is dispute as to whether this has occurred, it is usually a question of fact, to be determined from the circumstances of the particular case, which include not only nonperformance, but also expressions of intent and other actions of the parties.

Timpanogos Highlands, Inc., v. Harper, 544 P.2d 481, 484 (Utah 1975).

The Utah Court of Appeals has confirmed this definition and applied it in Lucky Seven Rodeo Corp. v. Clark, 755 P.2d 750 (Utah App. 1988.)

Abandonment means the intentional relinquishment of one's rights under the contract. The right under this alleged contract was to collect rent. No rent was ever collected and no rent was ever sought. This must be clear and unequivocal. The evidence cited and relied upon comes solely from Elaine, the Plaintiff. It is clear and unequivocal. If there were a dispute, then the circumstances of the particular case control, which include not only nonperformance, but expressions of intent and other actions. Elaine testified the rental agreement was put together in March, 1990, a year after the rental began, for the purpose of Boyd and Elaine qualifying for a loan. Under the standard set in

Timpanogos the contract, if it ever did exist, was clearly abandoned.

Elaine was not a party to this rental agreement. If, in fact it ever was a contract, it was abandoned. Abandonment was confirmed by both Elaine's statement that its purpose was to obtain a loan to purchase the farm and by the failure to even try to collect any of the rent monies. The trial court erred and the award of \$4,500.00 to Elaine from the Intervenor should be reversed.

CONCLUSION

The trial court erred in awarding all of the 70 acre farm and all of the 30 shares of Deseret water stock to the Defendant. The farm and water stock should have been divided pursuant to the parties' deeds, i.e., as tenants in common between the Plaintiff and Defendant and the Intervenor.

The trial court further erred in awarding a \$4,500.00 judgment to the Plaintiff and against the Intervenor for claimed past due rent. The Plaintiff was not a party to the alleged rental agreement. She also stated that the purpose of the alleged rental agreement, which was created a year after the lease began, was to help the Plaintiff and the Defendant to qualify for a loan. She acknowledged that no attempt was ever made to collect any rent. Even if the court found that she was a party to the alleged agreement, the alleged agreement was abandoned by the parties.

The \$4,500.00 judgment should not have been awarded.

DATED this 24th day of June, 1997.



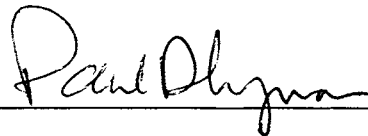
PAUL D. LYMAN
Attorney for Appellant, Intervenors

MAILING CERTIFICATE

I hereby certify that a full, true and complete copy of the above and foregoing BRIEF OF APPELLANT was placed in the United States mail at Richfield, Utah, with first-class postage thereon fully prepaid, on the 24th day of June, 1997, addressed as follows:

Mr. Don R. Peterson
Attorney at Law
P. O. Box 778
Provo, Utah 84603

Mr. Matthew Hilton
Attorney at Law
P. O. Box 781
Springville, Utah 84663



IN THE UTAH COURT OF APPEALS

ALS


ELAINE D. BRODERICK,	:	
Plaintiff and	:	
Appellee,	:	
vs.	:	MAILING CERTIFICATE
BOYD E. BRODERICK,	:	
Defendant and	:	Case No. 960775-CA
Appellee.	:	
vs.	:	
ALMA L. BRODERICK and	:	
SEPHRONIA L. BRODERICK,	:	
Intervenors and	:	
Appellants.	:	

I hereby certify that on the 24th day of June, 1997, I placed in the United States mail, postage prepaid, first class, a copy of the document entitled BRIEF OF APPELLANT (INTERVENORS) filed in this case, to the following counsel of record:

Mr. Don R. Peterson
HOWARD, LEWIS & PETERSEN
Attorney at Law
120 East 300 North Street
P. O. Box 1248
Provo, Utah 84603

Mr. Matthew Hilton
Attorney at Law
P. O. Box 781
Springville, Utah 84663

DATED this 24th day of June, 1997.



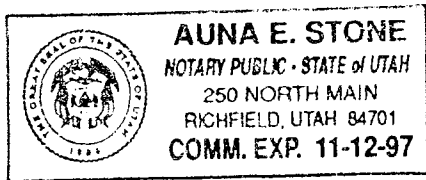
PAUL D. LYMAN
Attorney for Intervenors and
Appellants

Page 2--Mailing Certificate
Elaine D. Broderick v. Boyd E. Broderick
Alma L. Broderick and Sephronia L. Broderick

STATE OF UTAH)
 : ss.
COUNTY OF SEVIER)

On the 24th day of June, 1997, Paul D. Lyman appeared before me and swore under oath and penalty of perjury that he had signed the foregoing mailing certificate and that the statements contained therein were true.

DATED this 24th day of June, 1997.



Auna E. Stone
NOTARY PUBLIC
Residing at Richfield, Utah
My Commission Expires 11/12/97

ADDENDUM

Amended Findings of Fact and Conclusions of Law, signed
October 31, 1996

Amended Decree of Divorce, signed October 31, 1996

Plat map attached to Trial Exhibit 15.

Melville Irrigation Company Deed, Trial Exhibit 16.

February 25, 1989, Rental Agreement, Trial Exhibit 9.

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HOWARD, LEWIS & PETERSEN
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Our File No. 22,825

Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF MILLARD COUNTY

STATE OF UTAH

ELAINE D. BRODERICK, Plaintiff, vs. BOYD E. BRODERICK, Defendant.	AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW Case No. 94401066DA Judge Guy R. Burningham
ALMA L. BRODERICK and SEPHRONIA L. BRODERICK, Intervenors.	

The above-entitled matter came on regularly for trial on October 13, 1995. The plaintiff was present and represented by her attorney, Don R. Petersen of Howard, Lewis & Petersen; the defendant was present and represented by his attorney, Eldon A. Eliason; the intervenors were present and represented by their attorney, Paul D. Lyman. The Court heard testimony, received evidence, reviewed the file, issued a Memorandum Decision dated January 16, 1996,

received the plaintiff's Motion to Amend Findings of Fact and Conclusions of Law and Decree of Divorce, together with accompanying memoranda of the parties; and the Court having issued its ruling on said Motion to Amend on August 13, 1996, and being fully advised in the premises, it now makes and enters the following:

AMENDED FINDINGS OF FACT

1. Plaintiff and defendant are, and have been, residents of Millard County, State of Utah, for three months prior to the filing of this action.
2. Plaintiff and defendant were married on October 24, 1987, and are currently wife and husband, respectively.
3. No children were born of this marriage and none are expected.
4. During the course of the marriage, the parties experienced irreconcilable differences making it impossible for them to continue their marriage relationship.
5. Plaintiff is currently disabled and receives a \$229.50 monthly pension benefit and a \$799.00 monthly social security disability benefit, for a total monthly income of \$1,028.50. Defendant shall have a monthly income of \$736.67 imputed to him.
6. Prior to the parties' marriage, the plaintiff owned a home in Southgate, California, subject to a mortgage. The home owned by the plaintiff in Southgate, California at the time of the marriage of the parties had a value of \$110,000.00, subject to a mortgage of \$59,000.00.

7. Upon careful consideration of the case law and Utah statute, it appears that reversible error has occurred with this Court's present lack of sufficient findings regarding alimony. Upon consideration of the four factors outlined in § 30-3-5, Utah Code Annotated, 1953, as amended, the Court makes the following findings:

a. That the plaintiff is currently disabled and has ongoing needs which this Court was unable to provide for in the property division already made.

b. That the defendant is able-bodied and able to provide alimony to the plaintiff in the amount of \$175.00 per month, which amount is reasonable to assist the plaintiff in her ongoing needs. This alimony should be retroactive to the date of the Decree of Divorce, February 28, 1996. Due to the duration of this marriage, the alimony is permanent until such time as the plaintiff may remarry, co-habitate or otherwise legally not be entitled to the same.

8. In December, 1987, the parties refinanced the Southgate, California home to borrow an additional sum of \$30,000.00. From that amount, the parties paid \$20,256.72 to the Internal Revenue Service to pay defendant's tax debt, \$2,900.00 to remodel the Southgate home, and \$3,343.28 as a down payment on a home in Delta, Utah. These debts and assets were all commingled, with the exception of defendant's tax debt. Defendant's name was put on the home in Southgate, California because of the debt he had with the Internal Revenue Service, as set forth in paragraph 7 above in the amount of \$20,256.72. The home was refinanced to pay off the defendant's tax debt. The only reason the defendant's name was put on the home in Southgate, California was to pay off a debt that he had incurred prior to marrying the plaintiff.

It is reasonable and proper that the plaintiff be reimbursed for the \$20,256.72 which was used from the plaintiff's home which she owned prior to her marrying the defendant to pay off the defendant's debt which was incurred prior to their marriage.

9. Intervenor, who are defendant's parents, purchased a home in Delta, Utah in 1972. Intervenor sold this home to plaintiff and defendant on September 6, 1988 for \$15,000.00. Plaintiff and defendant paid \$6,500.00 as a down payment--\$3,343.28 from the refinancing of the Southgate home and \$3,156.72 from their earnings--and for the remainder they obligated themselves for monthly payments in the amount of \$300.00. Alma L. Broderick, one of the intervenors, entered into a written contract with the plaintiff and defendant to rent the plaintiff and defendant's home located in Delta, Utah, for the sum of \$250.00 per month. There is owed the sum of \$9,000.00, which is calculated from February, 1989, to January, 1993. It is reasonable and proper that the plaintiff be granted judgement against the intervenors Alma L. Broderick and Sephronia L. Broderick in the amount of \$4,500.00 for delinquent rent.

10. In January, 1993, plaintiff and defendant deeded the Delta home back to intervenors in exchange for \$15,000.00: \$3,500.00 truck value, \$2,000.00 loan in 1992, \$9,000.00 cash, and \$500.00 reduction in price.

11. In May, 1990, plaintiff and defendant purchased a 70-acre farm near Delta, Utah, together with 62 shares of Melville Irrigation water stock and 30 shares of Deseret water stock, for \$66,389.28. Plaintiff and defendant paid \$12,859.28 as a down payment and obligated themselves for monthly payments of \$775.47. Of the \$12,859.28 down payment,

plaintiff's parents contributed \$5,000.00 as a gift to plaintiff, and intervenors contributed \$7,859.28 as a loan to plaintiff and defendant.

12. Plaintiff and defendant are the joint-tenant owners of record on the farm property. Plaintiff, defendant and intervenors are the joint-tenant owners of the 62 shares of Melville Irrigation water stock. Intervenors' names were placed on the water stock certificate to secure repayment of their \$7,859.28 loan to plaintiff and defendant and for the bank's added security on the farm loan.

13. Plaintiff and defendant made the monthly payments until September, 1991, when intervenors began managing the farm and making the monthly payments. In addition, intervenors reaped the benefits of managing the farm and of making the payments.

14. In March, 1993, the Southgate, California home finally sold for \$150,000.00. Plaintiff and defendant received a net sum of \$52,413.04. Of the net proceeds, plaintiff and defendant paid \$36,390.04 to retire their farm mortgage obligation; plaintiff and defendant used the remaining \$16,023.00 for living and farm expenses.

15. On June 4, 1993, plaintiff and defendant purchased a home in the Sutherland area for \$27,000.00. Zions Bank loaned them the purchase money, secured by the Melville Irrigation and Deseret water stocks. The monthly payments are \$300.00. The remaining obligation is about \$25,000.00.

16. Plaintiff and defendant made the monthly payments on the Sutherland home through June, 1994, except that intervenors made the March, 1994, payment. Plaintiff made

the monthly payments from July, 1994, to January, 1995. Intervenors made the monthly payments from February, 1995, to October, 1995.

17. Plaintiff's payments total \$2,100.00; intervenors' payments total \$3,000.00: the February, 1995, to October, 1995 payments amounted to a \$2,700.00 loan to plaintiff and defendant; the March, 1994 payment amounted to a gift to plaintiff and defendant.

18. Plaintiff and defendant separated in June, 1994; plaintiff has lived alone in the Sutherland home since the separation.

19. The average appraised value of the farm with water stock is \$87,500.00: 70 acres of land is \$20,780.00, 62 shares of Melville Irrigation water stock at \$900.00 per share is \$55,800.00, and 30 shares of Deseret water stock at an average price of \$364.00 is \$10,920.00, for a total water stock value of \$66,720.00. The average appraised value of the Sutherland home is \$36,250.00.

20. Intervenors' assets relating to this matter include their one-half interest in the Melville Irrigation water stock, valued at \$27,900.00. The \$2,700.00 loan to plaintiff and defendant for nine monthly payments of \$300.00 each towards the Sutherland home, and the \$7,859.28 loan to plaintiff and defendant for the down payment on the farm, are not actual debts of plaintiff and defendant, in that intervenors have their interest in the Melville Irrigation water stock with a value significantly greater than the loan amounts. Therefore, the value of intervenors' total interest relating to this matter is \$27,900.00, which creates a significant windfall to intervenors.

21. The value of the Sutherland home plus the value of the farm with water stock is \$123,750.00. By subtracting out intervenors' interest, plaintiff and defendant have interests valued together at \$95,850.00.

22. Plaintiff's assets include a one-fourth interest in the Melville Irrigation water stock, valued at \$13,950.00; a one-half interest in the Deseret water stock, valued at \$5,460.00; \$5,000.00 of equity in the farm, derived from a gift from her parents and used in the down payment; a one-half interest in the farm, after subtracting her \$5,000.00 down payment, valued at \$7,890.00; a one-half interest in the Sutherland home, valued at \$18,125.00; one-half of a debt owed by defendant to the community for the community's payment of his separate tax debt, in the amount of \$10,128.36; a debt owed by defendant for his share of seven monthly payments plaintiff made alone, valued at \$1,050.00. Plaintiff's total asset value is \$61,603.36.

23. Plaintiff's debts include one-half of the obligation to Zions Bank for the Sutherland home, in the amount of \$12,500.00; one-half of the obligation owed to intervenors for nine \$300.00 mortgage payments relating to the Sutherland home, in the amount of \$1,350.00; one-half of the First Security Visa debt, in the amount of \$500.00; one-half of the Zions Bank Visa debt, in the amount of \$350.00; one-half of the Plus One Plumbing debt, in the amount of \$450.00. Plaintiff's share of the marital obligations is \$15,150.00.

24. Defendant's assets include a one-fourth interest in the Melville Irrigation water stock, valued at \$13,950.00; a one-half interest in the Deseret water stock, valued at \$5,460.00; a one-half interest in the farm, after subtracting plaintiff's \$5,000.00 down payment, valued at

\$7,890.00; a one-half interest in the Sutherland home, valued at \$18,125.00. Defendant's total asset value is \$45,425.00.

25. Defendant's debts include one-half of the obligation to Zions Bank for the Sutherland home, in the amount of \$12,500.00; one-half of the obligation owed to intervenors for nine \$300.00 mortgage payments relating to the Sutherland home, in the amount of \$1,350.00; one-half of the First Security Visa debt, in the amount of \$500.00; one-half of the Zions Bank Visa debt, in the amount of \$350.00; one-half of the Plus One Plumbing debt, in the amount of \$450.00; one-half of the seven \$300.00 payments plaintiff paid on the Sutherland home, in the amount of \$1,050.00; a debt owed by defendant to the marital estate for its \$20,256.72 payment of his separate tax debt, one-half of which amount defendant may retain and one-half of which plaintiff shall receive, in the amount of \$10,128.36. Defendant's share of the marital obligations is \$26,328.36.

26. Intervenors' assets relating to this matter have a net value of \$27,900.00. Plaintiff has a net value, i.e., after subtracting debt value from asset value, of \$45,453.36. Defendant has a net value of \$19,096.64.

27. The parties own two shares of Deseret water stock which came with the purchase of the Sutherland home, which stock should be awarded to the plaintiff, subject, however, to the pledge of the shares as collateral on the loan. The loan should still be repaid as already ordered, and when the two shares are released, they should be transferred to the plaintiff.

28. Plaintiff and defendant are indebted to the Internal Revenue Service for taxes incurred for the year 1992 in the approximate amount of \$700.00. This was an obligation incurred while the parties were living together. The plaintiff was unemployed; the defendant was employed and working. It is reasonable and proper that both the plaintiff and defendant equally share this obligation.

From the foregoing Amended Findings of Fact, the Court now makes and enters the following:

AMENDED CONCLUSIONS OF LAW

29. Plaintiff is entitled to a decree of divorce divorcing her from defendant on the grounds of irreconcilable differences.

30. Plaintiff may restore her surname to "Drikas."

31. Plaintiff and defendant shall be awarded personal property now in their respective possession, except that defendant shall be awarded the parrot and porcelain doll now in plaintiff's possession. Defendant shall also be awarded the manuscript signed by President Grover Cleveland if and when plaintiff finds it.

32. Plaintiff shall be awarded the Sutherland home, without any encumbrances, and \$9,203.36, secured by her one-fourth interest in the Melville Irrigation water stock. If defendant fails to remit the \$9,203.36 amount to plaintiff within six (6) months from the Court's signing the decree, plaintiff shall have the right to foreclose on the water stock.

33. Plaintiff shall assume none of the marital debts. Defendant's name shall be removed from the deed to the Sutherland home.

34. Defendant shall be awarded the farm, the 62 shares of Melville Irrigation water stock subject to plaintiff's one-fourth interest, and the 30 shares of Deseret water stock.

35. Defendant shall assume the \$25,000.00 debt secured by the water stock, the \$2,700.00 debt owed to intervenors for their loan to make payments on the Sutherland home, the Plus One Plumbing debt in the amount of \$900.00, the First Security Visa debt in the amount of \$1,000.00, and the Zions Bank Visa debt in the amount of \$700.00. In addition, plaintiff's name shall be removed from the certificates for water stock, upon defendant's satisfying the \$9,203.36 award to plaintiff; from the deed to the farm; from the Plus One Plumbing account; from the First Security Visa account and from the Zions Bank Visa account.

36. Intervenors shall retain their one-half interest in the 62 shares of Melville Irrigation water stock.

37. All parties, including intervenors, shall pay their own attorney fees.

38. Plaintiff is entitled to an award of alimony and the defendant should pay to her the sum of \$175.00 per month from February 28, 1996. This sum should be paid on the 28th day of each month, until such time as the plaintiff may remarry, co-habitate, or otherwise legally not be entitled to the same.

39. Plaintiff is entitled to judgment against the defendant in the amount of \$20,256.72 which was paid by the plaintiff to satisfy the defendant's debt with the IRS.

40. Both the plaintiff and the defendant should equally share the obligation owed to the IRS for the tax year 1992.

DATED this ____ day of September, 1996.

BY THE COURT

GUY R. BURNINGHAM
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

PAUL D. LYMAN, ESQ.
Attorney for Intervenors

ELDON A. ELIASON, ESQ.
Attorney for Defendant

NOTICE TO COUNSEL

TO: PAUL D. LYMAN, ESQ. and ELDON A. ELIASON, ESQ.:

You will please take notice that the undersigned, attorney for plaintiff, will submit the above and foregoing Amended Findings of Fact and Conclusions of Law to the Honorable Guy R. Burningham for his signature upon the expiration of five (5) days from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 4-504 of the Rules of Judicial Administration of the State of Utah.

DATED this 5th day of ~~August~~^{Sept.}, 1996.



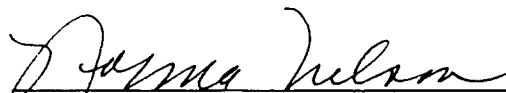
DON R. PETERSEN, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Plaintiff

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, this 5th day of ~~August~~^{Sept.}, 1996.

Paul D. Lyman, Esq.
835 East 300 North, Suite 100
Richfield, UT 84701

Eldon A. Eliason, Esq.
P. O. Box 605
Delta, UT 84624



SECRETARY

J:\DRP\BRODRCK.FOF

DON R. PETERSEN (2576), for:
HOWARD, LEWIS & PETERSEN
ATTORNEYS AND COUNSELORS AT LAW
120 East 300 North Street
P.O. Box 778
Provo, Utah 84603
Telephone: (801) 373-6345
Facsimile: (801) 377-4991

Our File No. 22,825

Attorneys for Plaintiff

IN THE FOURTH JUDICIAL DISTRICT COURT OF MILLARD COUNTY

STATE OF UTAH

ELAINE D. BRODERICK, Plaintiff, vs. BOYD E. BRODERICK, Defendant.	AMENDED DECREE OF DIVORCE Case No. 944401066 Judge Guy R. Burningham
ALMA L. BRODERICK and SEPHRONIA L. BRODERICK, Intervenors.	

The above-entitled matter came on regularly for trial on October 13, 1995. The plaintiff was present and represented by her attorney, Don R. Petersen of Howard, Lewis & Petersen; the defendant was present and represented by his attorney, Eldon A. Eliason; and the intervenors were present and represented by their attorney, Paul D. Lyman. The Court heard testimony, received evidence, reviewed the file, and issued a Memorandum Decision dated January 16,

1996. The Court notes the motion to amend filed by the plaintiff and the objections filed by the intervenors and entered its ruling on August 13, 1996. The Court notes that Rule 8 of the Utah Rules of Civil Procedure requires that all pleadings shall be so construed to do substantial justice. The Court having heretofore entered its Amended Findings of Fact and Conclusions of Law, and being fully advised in the premises, makes and enters the following:

AMENDED DECREE OF DIVORCE

1. Plaintiff is hereby granted a decree of divorce divorcing her from the defendant on the grounds of irreconcilable differences.
2. Plaintiff is hereby restored her surname of "Drikas."
3. Plaintiff and defendant are hereby awarded the personal property now in their respective possession, except that defendant is awarded the parrot and porcelain doll now in plaintiff's possession. Defendant is also awarded the manuscript signed by President Grover Cleveland if and when plaintiff finds it.
4. Plaintiff is hereby awarded the Sutherland home, without any encumbrances, and \$9,203.36, secured by her one-fourth interest in the Melville Irrigation water stock. If defendant fails to remit the \$9,203.36 amount to plaintiff within six (6) months from the Court's signing the decree, plaintiff is granted the right to foreclose on the water stock.
5. Plaintiff shall assume none of the marital debts. Defendant's name shall be removed from the deed to the Sutherland home.

6. Defendant is hereby awarded the farm, the 62 shares of Melville Irrigation water stock subject to plaintiff's one-fourth interest, and the 30 shares of Deseret water stock.

7. Defendant is ordered to assume the \$25,000.00 debt secured by the water stock, the \$2,700.00 debt owed to intervenors for their loan to make payments on the Sutherland home, the Plus One Plumbing debt in the amount of \$900.00, the First Security Visa debt in the amount of \$1,000.00, and the Zions Bank Visa debt in the amount of \$700.00. In addition, plaintiff's name shall be removed from the certificates for water stock, upon defendant's satisfying the \$9,203.36 award to plaintiff; from the deed to the farm; from the Plus One Plumbing account; from the First Security Visa account and from the Zions Bank Visa account.

8. Intervenors shall retain their one-half interest in the 62 shares of Melville Irrigation water stock.

9. All parties, including intervenors, shall pay their own attorney fees.

10. Plaintiff is awarded alimony in the amount of \$175.00 per month retroactive to February 28, 1996. Defendant is ordered to pay to the plaintiff \$175.00 per month on the 28th day of each month until such time as the plaintiff may remarry, co-habitate or otherwise legally not be entitled to the same.

11. Plaintiff is awarded judgment against the defendant in the amount of \$20,256.72, which is the amount the plaintiff paid towards the defendant's obligation to the Internal Revenue Service.

12. Plaintiff is awarded judgment against the intervenors Alma L. Broderick and Sephronia L. Broderick in the amount of \$4,500.00 for delinquent rent.

13. Plaintiff is awarded two shares of Deseret water stock, subject to any loan wherein the stock is used as collateral. The loan should be repaid as ordered by the Court and two shares of Deseret water stock are to then be released and transferred to the plaintiff.

DATED this 31 day of ^{October}~~September~~, 1996.

BY THE COURT


GUY R. BURNINGHAM
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

PAUL D. LYMAN, ESQ.
Attorney for Intervenors

ELDON A. ELIASON, ESQ.
Attorney for Defendant

NOTICE TO COUNSEL

TO: PAUL D. LYMAN, ESQ. and ELDON A. ELIASON, ESQ.:

You will please take notice that the undersigned, attorney for plaintiff, will submit the above and foregoing Amended Decree of Divorce to the Honorable Guy R. Burningham for his signature upon the expiration of five (5) days from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that time, pursuant to Rule 4-504 of the Rules of Judicial Administration of the State of Utah.

DATED this 5th day of September, 1996.




DON R. PETERSEN, for:
HOWARD, LEWIS & PETERSEN
Attorneys for Plaintiff

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, this 5th day of September, 1996.

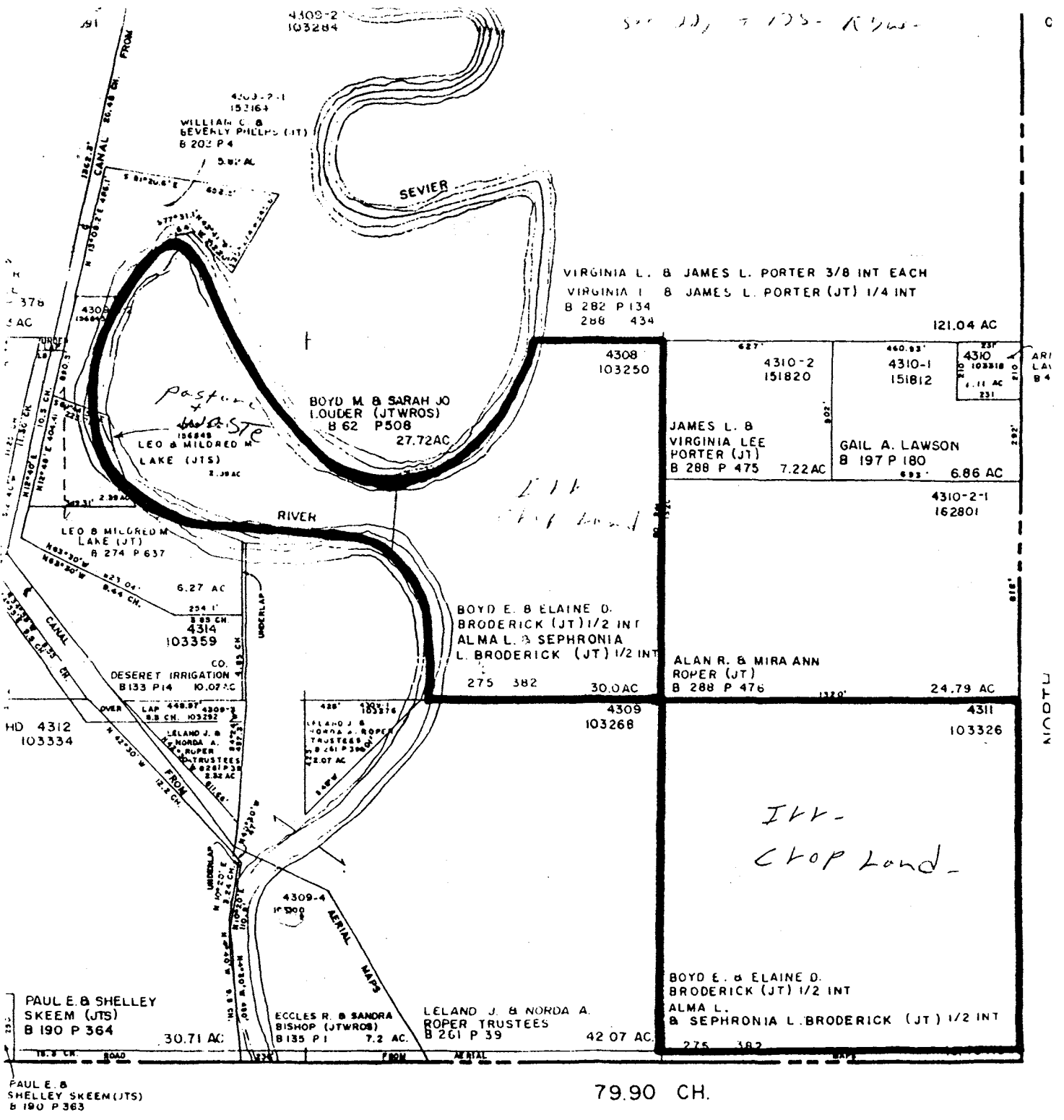
Paul D. Lyman, Esq.
835 East 300 North, Suite 100
Richfield, UT 84701

Eldon A. Eliason, Esq.
P. O. Box 605
Delta, UT 84624



SECRETARY

J:\DR\FABRODRCK.DEC



INCORPORATED UNDER THE LAWS OF

THE STATE OF UTAH

SHARES \$5.00

NUMBER

SHARES



Melville Irrigation Company

Capital Stock \$60,000

Principal Place of Business, Delta, Utah

No. of Shares 9,117

*Boyd E. Broderick and Elaine D. Broderick, his wife,
and Alma L. Broderick and Septornia L. Broderick, his
wife, all as joint tenants,* *is the*
registered holder of *Sixty two* *Shares*

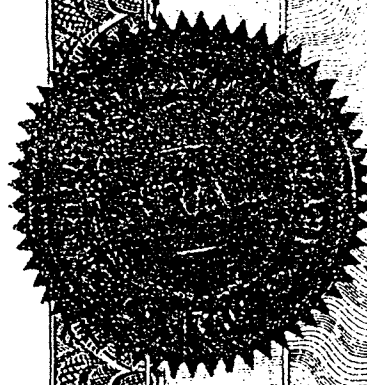
MELVILLE IRRIGATION COMPANY

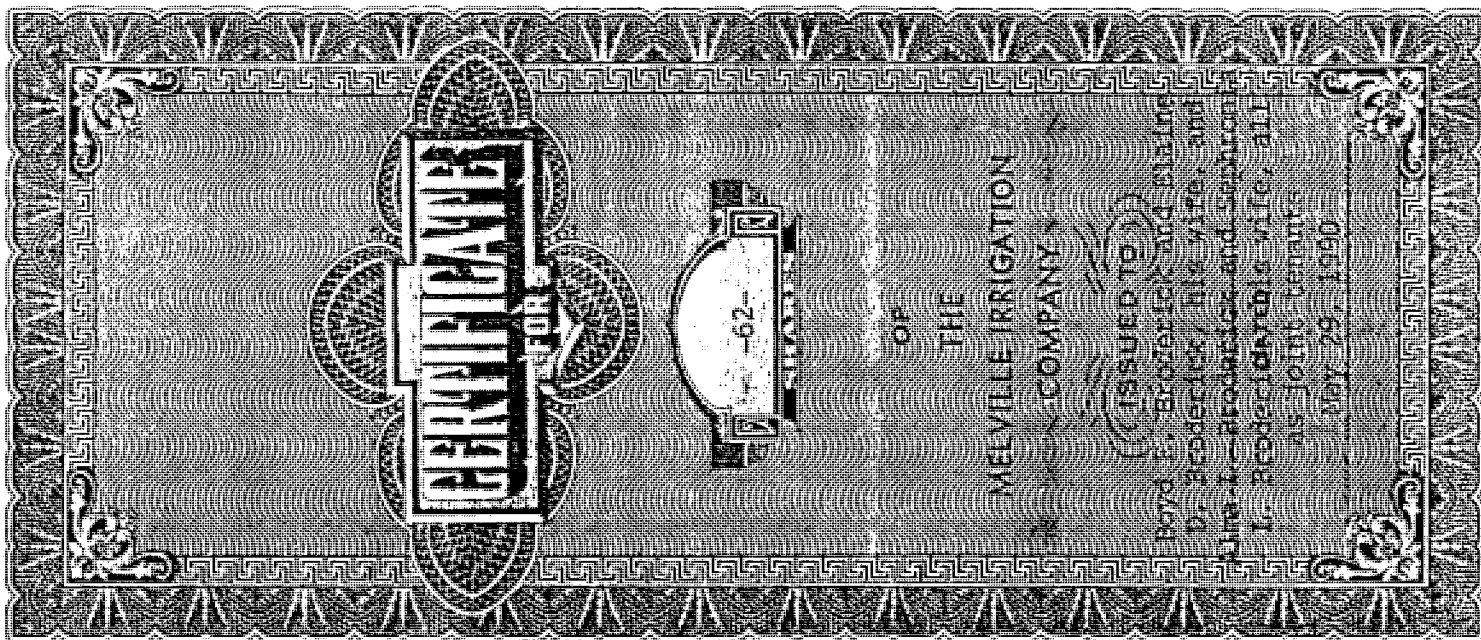
*transferable only on the books of the Corporation by the holder thereof in
person or by attorney-in-fact under order of the Corporation duly entered*

IN WITNESS WHEREOF, the said Corporation has caused its *Corporate Seal* to be signed
by its duly authorized officers and its Secretary, *May 29th* *AD. 1930*

Dean Hudson
Secretary

President *Wm. L. Brund*





For Value Received, _____ hereby sell, assign, and transfer
unto _____

Shares
represented by the within Certificate, and do hereby
irrevocably constitute and appoint _____

Attorney
to transfer the said Shares on the books of the within named
Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of _____

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
FACE OF THE CERTIFICATE, IN EVERY PARTICULAR, WITHOUT
ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

RENTAL AGREEMENT

(MONTH - TO - MONTH TENANCY)

THIS AGREEMENT, entered into this 25 day of Feb, 1989, by and between Royd Beederick and Al Beederick, hereinafter called respectively lessor and lessee.

WITNESSETH: That for and in consideration of the payment of the rents and the performance of the covenants contained on the part of lessee, said lessor does hereby demise and let unto the lessee, and lessee hires from lessor for use as a residence those premises described as 3 Redeen Home, located at 619 W 100th Street, Dulca 84624, Utah, for a tenancy from month-to-month commencing on the 25 day of Feb, 1989, and at a monthly rental of 250.00 (\$250.00) Dollars per month, payable monthly in advance on the 15 day of each and every month.

It is further mutually agreed between the parties as follows:

- (1) Said premises shall be occupied by no more than 2 adults and 0 children.
- (2) Lessee shall not keep or permit to be kept in said premises any dog, cat, parrot, or other bird or animal.
- (3) Lessee shall not violate any city ordinance or state law in or about said premises.
- (4) That all alterations, additions, or improvements made in and to said premises shall, unless otherwise provided by written agreement between the parties hereto, be the property of Lessor and shall remain upon and be surrendered with the premises.
- (5) Lessee shall not sub-let the demised premises, or any part thereof, or assign this agreement without the lessor's written consent.
- (6) Any failure by lessee to pay rent or other charges promptly when due, or to comply with any other term or condition hereof, shall at the option of the lessor, and after lawful notice given, forthwith terminate this tenancy.
- (7) Lessee shall keep and maintain the premises in a clean and sanitary condition at all times, and upon the termination of the tenancy shall surrender the premises to the lessor in as good condition as when received, ordinary wear and damage by the elements excepted.
- (8) Except as to any condition which makes the premises untenable, lessee hereby waives all right to make repairs at the expense of lessor as provided in Section 1942 of the Civil Code of the State of California, and all rights provided in Section 1941 of said Civil Code.
- (9) The Lessee agrees to properly cultivate, care for, and adequately water the lawn, shrubbery, trees and grounds.
- (10) The _____ shall pay for all water supplied to the said premises. The lessee shall pay for all gas, heat, light, power, telephone service, and all other services, except as herein provided, supplied to the said premises.
- (11) Nothing contained in this agreement shall be construed as waiving any of lessor's rights under the laws of the State of California.
- (12) This agreement and the tenancy hereby granted may be terminated at any time by either party hereto by giving to the other party not less than (30) days prior notice in writing.
- (13) The prevailing party in an action brought for the recovery of rent or other moneys due or to become due under this lease or by reason of a breach of any covenant herein contained or for the recovery of the possession of said premises, or to compel the performance of anything agreed to be done herein, or to recover for damages to said property, or to enjoin any act contrary to the provisions hereof, shall be awarded all of the costs in connection therewith, including, but not by way of limitation, reasonable attorney's fees.

(14) Remarks:

IN WITNESS WHEREOF the parties hereto have executed this agreement in duplicate the day and year first above written.

Royd Beederick
Lessor

Al Beederick
Lessee